

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SANTOS ARNULFO ESCOBAR and
FRANCISCO GALINDO APARICIO,
individually and on behalf of others
similarly situated,

Plaintiffs,

-against-

MAHOPAC FOOD CORP. (d/b/a/
ASSOCIATED f/d/b/a PIONEER), DARHAN
DARHAN, HAMED DOE, and JOE DOE
(A/K/A HAKMET A. OTHAM, A/K/A JOEY
OTHMAN

Defendants.
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MEMORANDUM AND ORDER

Case No. 1:19-cv-00510-FB-JRC

BLOCK, Senior District Judge:

Plaintiff Santos Arnulfo Escobar (“Escobar” or “Plaintiff”) commenced this action pursuant to the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) on behalf of himself and a putative FLSA collective against Mahopac Food Corp. (“Mahopac”), Darhan Darhan (“Darhan”), and Joe Doe (a/k/a Hakmet A. Otham, a/k/a Joey Othman) (“Joe” and collectively, “Defendants”). Plaintiff also asserted claims against Hamed Doe (“Hamed.”)

The Clerk of Court noted the default of Darhan and Joe on January 15, 2020 and Mahopac on September 9, 2020. Plaintiff moved for a default judgment on March 9, 2022 against all Defendants, though Hamed was never served and therefore his default was never noted by the Clerk.

On March 2, 2023, Magistrate Judge James R. Cho issued a Report and Recommendation (“R&R”), recommending that the pending motion for default judgment be granted in part and denied in part. *See* ECF No. 65 at 3. The R&R also recommended that judgment be entered against Defendants Darhan, Doe, and Mahopac jointly and severally, and that plaintiffs should be awarded a total of \$317,422.68 in damages, as well as pre- and post-judgment interest, and \$7,933.30 in attorney’s fees and costs.

However, on March 17, 2023, counsel for Joe filed a notice of appearance. The same day, Joe filed a motion to vacate the Clerk’s entry of default against him. An entry of default against a defendant is a prerequisite of a default judgment. Fed. R. Civ. P. 55(a).

Because the outcome of Joe’s pending motion to vacate may render the Plaintiff’s pending motion for default judgment moot, *see LeMache v. Tunnel Taxi Mgmt., LLC*, 354 F. Supp. 3d 149 (E.D.N.Y. 2019), the Court **DECLINES TO ADOPT** the R&R and **DENIES** the Plaintiff’s motion for a default judgment without prejudice to renew it after Joe’s motion to vacate is decided. Defendant Joe Doe’s motion [68] to vacate the entry of default is referred to Magistrate Judge Cho.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
March 21, 2023